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PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 August 1997, at 3 p.m.

Chairman: Mr. BENGOA

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS ON AGENDA ITEM 2 (E/CN.4/Sub.2/1997/L.2, L.3, L.5, L.8)

1. Mrs. WARZAZI, speaking also on behalf of Mr. Guissé, said she was still deeply shocked by the scenes - broadcast the previous day by a French television channel - showing guards beating and kicking prisoners in a Texas prison. There had however been no reaction by the international community to those instances of inhumane treatment and the numerous abuses also committed by the police and border guards. She regretted that the members of the Sub-Commission who sponsored draft resolutions condemning developing countries never took any action to condemn human rights violations in developed countries. It was because of such a selective approach that the Sub-Commission had already lost much of its credibility.

2. The rule of law, which purportedly prevailed in Western countries, and in particular in the United States, did not apply to certain sectors of the population, such as persons of African or Latin American origin. One could legitimately wonder what credence was to be given to the rule of law in a State that was incapable of ending human rights violations on its own territory.

3. Mrs. ATTAH said that she too regretted that the Sub-Commission never adopted draft resolutions on human rights violations in certain developed countries.

4. Mrs. PALLEY reminded the Sub-Commission first of all that, under the 1503 procedure, she had made a statement raising some questions about the human rights situation in the United States. Moreover, in a statement the previous week, she had said that if NGOs got down to it, they could submit reports to the Sub-Commission on racial discrimination against Blacks and Latin Americans in a super-Power. She added that if she herself had sufficient evidence for a draft resolution, there was no Western country that would be beyond her criticism.

5. Mr. EIDE said that as most of the members of the Sub-Commission were not from Western countries, in simple numerical terms it would not be difficult to get a draft resolution adopted on the human rights situation in a developed country and that anyone could submit a draft resolution if they wished.

6. Mr. ALFONSO MARTÍNEZ pointed out that each time he had attempted to introduce a draft resolution concerning a developed country, he had encountered negative reactions and reservations. However, he still hoped that one day such a draft resolution would be proposed and adopted.

7. The CHAIRMAN invited the members of the Sub-Commission to consider the draft resolutions submitted under agenda item 2. With reference to decisions 1994/110, 1995/106 and 1995/105, in which the Sub-Commission had decided, without a vote, to vote by secret ballot, whenever such a vote was requested, on proposals pertaining to allegations of violations of human rights in countries, including proposals of a procedural nature relating to

proposals of a substantive nature, he asked whether there was any such proposal in respect of the draft resolutions under consideration under agenda item 2.

8. Mr. EIDE, endorsed by Mrs. WARZAZI and Mr. JOINET, proposed that a vote should be held by secret ballot on all the draft resolutions under agenda item 2.

9. The CHAIRMAN said that if there were no objections, he would take it that the Sub-Commission wished to accept the proposal.

10. It was so decided.

11. Mr. ALFONSO MARTÍNEZ said that he had not wished to oppose the consensus on the decision, although he had reservations regarding the procedure - in particular when it concerned agenda item 2 - as it denied members the opportunity to explain their votes.

Draft resolution E/CN.4/Sub.2/1997/L.2 (Situation of human rights in Turkey)

12. Mr. WEISSBRODT pointed out that during the debates under agenda item 2, NGOs had expressed more concern about the human rights situation in Turkey than in any other country. Some of the NGOs were undoubtedly reliable sources of information, and the concern expressed by Amnesty International regarding Turkey was also well known. He had therefore prepared a draft resolution on the situation of human rights in Turkey, which reflected, in a balanced manner, the facts set forth during the session by numerous speakers, but also the information provided by representatives of the Turkish Government.

13. For years, torture, extrajudicial executions, arbitrary arrests, forced evictions, the destruction of thousands of villages, the displacement of hundreds of thousands of people had been denounced in Turkey. The problems had been described by the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the United Nations Committee against Torture and the various thematic rapporteurs of the Commission on Human Rights. The draft resolution reflected their findings. However, it also took into account the positive measures taken by the Government of Turkey, to which should be added the decision adopted on 14 August 1997 to grant an amnesty to journalists imprisoned for having exercised their freedom of expression. To cover that point, he suggested amending the draft resolution by adding a new subparagraph (c) to operative paragraph 1, which would read: "The amnesty declared in August 1997 for journalists in prison". The preliminary recommendation made on 12 August 1997 by the High Council for the Struggle against Terrorism, regarding the lifting of the state of emergency in south-east Turkey, was also to be welcomed. In addition, the Government of Turkey had invited two thematic rapporteurs of the Commission on Human Rights to visit Turkey in the coming months or years.

14. Nevertheless, problems persisted, as serious human rights violations were still being committed in Turkey. The Government of Turkey had no hesitation in using violence against those who opposed its policy, particularly the Kurdish minority. The Government of Turkey claimed that it

was fighting terrorists, but denied the existence of an armed conflict and refused to apply the fundamental humanitarian principles set forth in common article 3 of the Geneva Conventions. However, there was no doubt about the organized nature of the violence, nor about the fact that it had passed the threshold beyond which the humanitarian law relating to the victims of non-international armed conflict applied. There was every reason to expect the representative of Turkey to say, when he spoke before the vote - as he had already said in conversations with the speaker - that if the resolution was adopted, the Turkish Government might cease cooperating with the Commission under the thematic procedures. He hoped that the Government would show a more constructive attitude and that it would regard the resolution as an appeal for it to act effectively, to ratify the human rights covenants and make a reality of its international commitments.

15. Mr. ALFONSO MARTÍNEZ, speaking on a point of order and supported by Mrs. WARZAZI, urged his colleagues not to reveal, when they spoke in public, the content of private conversations with representatives of Governments or NGOs.

16. Mr. WEISSBRODT said that the observer for Turkey might focus on a particular phrase or clause, as he had done the previous year to prevent the adoption of another resolution. The sponsors of the draft resolution under consideration, however, had done everything possible to produce a balanced text, and they had borne in mind all the suggestions made concerning the draft, which had been available to the experts and to the Government of Turkey for at least a week. The Government of Turkey might perhaps argue that the text contained some error or other; but it had always refused to discuss the terms of the draft resolution.

17. Although there had been serious problems in Turkey for years, neither the Sub-Commission nor the Commission had acted. Despite some recent progress, such as the amnesty for journalists, new cases of torture, extrajudicial executions and persecution of human rights activists, etc., had been reported during the past two months. Accordingly, the Sub-Commission ought to show concern for the victims and for its fundamental duty to protect human rights, by adopting a decision that would be a test of its conscience and credibility.

18. Mr. EIDE endorsed the observations made by Mr. Weissbrodt. It seemed to him worthwhile recalling what had happened in the case of Guatemala. The resolutions submitted to the Sub-Commission on the situation there had aroused bitter opposition, not only from the representatives of the Government of the time, but also from certain members of the Sub-Commission, who had taken the view that they amounted to interference in the domestic affairs of the country and an obstacle to its development. However, barely a few hours before the current meeting, representatives of the Guatemalan Government and opposition had come to thank the Sub-Commission for its work on Guatemala, and had emphasized that the attention paid by the international community had considerably encouraged the progress of democracy there. He repeated the observation he had made earlier during the debate on agenda item 2, that through the resolutions it adopted, the Sub-Commission's purpose was to assist all parties concerned to find solutions.

19. Mr. JOINET said he thought that Mr. Weissbrodt's argument that the Sub-Commission's credibility could be undermined if the draft resolution under consideration was not adopted was dangerous and should be avoided.

20. Mrs. WARZAZI said she shared Mr. Joinet's opinion. She also wished to remind Mr. Eide that the Sub-Commission's resolutions concerning Guatemala, to which he had referred, had been adopted by consensus. If progress had been achieved, it was attributable, in particular, to that consensus.

21. Mr. ULUCEVIK (Observer for Turkey) said that in his statement of 8 August 1997, he had given an account of the progress achieved in Turkey as part of the ongoing human rights reform process, which included changes to the Constitution, amendment of article 8 of the Anti-Terror Law, reduction of pre-trial detention periods and the establishment of a special unit to investigate cases of disappearance and of a human rights coordination committee. The Sub-Commission had also been informed of the visits made to Turkey by the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on Torture and the Chairman of the Commission on Human Rights Working Group on Enforced or Involuntary Disappearances. There had been further developments; on 12 August 1997, the High Council for the Struggle against Terrorism had proposed the total lifting of the state of emergency and the Parliament had adopted an amnesty law for journalists imprisoned for crimes of opinion. Those two important steps had been taken less than two months after the new Government had taken power.

22. The draft resolution (E/CN.4/Sub.2/1997/L.2) was no doubt motivated by a need for self-criticism on the part of its sponsors, who belonged to the Group of Western European and Other States, to which Turkey also belonged. Self-criticism was certainly virtuous, but the members of the regional group in question would have been more convincing if they had also taken into account certain particularly abhorrent manifestations of racism and xenophobia in their own countries, particularly against migrant workers. The draft resolution concerned a pluralist democracy in which there were free trade unions and a free press. It concerned a unitary State which had been combating PKK terrorism for 13 years, while endeavouring to promote human rights. It concerned a country which participated actively in the work of the United Nations on behalf of human rights and which cooperated with all the relevant machinery. Although the draft was entitled "Situation of human rights in Turkey", even a cursory glance revealed that it had little to do with the human rights of Turkey's 65 million citizens. The draft was inspired by PKK propaganda and contained factual errors. It treated a terrorist group in the same way as Turkey, a Member State of the United Nations. By doing so, it set a highly dangerous precedent, as Turkey was not the only country in which terrorist acts were committed. The draft described PKK as an opposition group, which was an aberration, and by calling PKK, in the English version of the text, the "Kurdish Worker's Party", it gave the impression that PKK was part of Turkey's democratic political structure and that the country's authorities were persecuting a party that was representative of Turkish citizens of Kurdish origin. PKK's correct title was "Workers' Party of Kurdistan". However, there was no region called Kurdistan in Turkey, and the PKK's main leader lived abroad. If it were adopted, the draft resolution would vest PKK with a status to which only States could aspire. It was contrary, both in letter and spirit, to the provisions of the resolutions

adopted by the Commission on Human Rights on human rights and terrorism, and its adoption would be tantamount to encouraging terrorism, something no country could accept.

23. Turkey was equally committed to promoting the fundamental rights of all its citizens and to eliminating PKK terrorism. The adoption of the draft resolution by the Sub-Commission would be unjust and unwarranted and would neither contribute to promoting human rights nor be conducive to cooperation.

24. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution.

25. A vote was taken by secret ballot.

26. At the invitation of the Chairman, Mr. Diaz Uribe and Mr. Maxim acted as tellers.

27. Draft resolution E/CN.4/Sub.2/1997/L.2 was rejected by 14 votes to 8, with 3 abstentions.

Draft resolution E/CN.4/Sub.2/1997/L.3 (Situation of human rights in Algeria)

28. Mr. JOINET said he had endeavoured to prepare a more balanced text for the draft resolution, which did not deal solely with extremist Islamic groups, but did condemn them with particular vigour. In his view, the last preambular paragraph, which asserted that the civilian population was "taken hostage", should be amended. Nevertheless, in view of the difficulty of the exercise, he said he would leave the decision to each member's own conscience, although he would emphasize, for certain people's benefit, that he did not represent France, but was simply a French expert.

29. Mr. LINDGREN ALVES said he wished to make a number of amendments to the important draft resolution, which concerned an extremely serious situation, responsibility for which lay not with the Government of Algeria, but with extremist groups purportedly acting in the name of religion. First of all, he proposed changing the title to "Human rights violations in Algeria caused by armed religious extremist groups". The words "is taken hostage and" would be deleted from the last preambular paragraph. Operative paragraph 2 would read as follows:

> "2. Urgently calls on the Algerian Government, in the fight against terrorism, to take action in conformity with the International Covenant on Civil and Political Rights;"

Lastly, operative paragraph 5, which was pointless would be deleted. By adopting the text thus amended, the Sub-Commission would be sending a very clear message about terrorist practices in Algeria and in the rest of the world.

30. Mr. JOINET, speaking on a point of order, said that he could not take a decision on any such amendments without consulting the other sponsors.

31. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, asked whether Mr. Joinet was requesting more time for consultations.

32. Mrs. PALLEY, speaking on a point of order, pointed out that in the absence of a decision to the contrary by the Chairman, amendments to draft resolutions had to be submitted in writing at least 24 hours before they were considered. Whatever the case, the amendments proposed were unacceptable and if they were adopted, it would be necessary to change the name of the Sub-Commission to "Sub-Commission on Prevention of Terrorism and Protection of Governments".

33. Mr. YIMER, speaking on a point of order, said that he failed to understand why the Sub-Commission could not take a decision on the draft resolution as amended by Mr. Lindgren Alves when it had done so on draft resolution E/CN.4/Sub.2/1997/L.2 after it had been revised orally by Mr. Weissbrodt.

34. Mrs. ATTAH said that all Africans were deeply concerned by events in Algeria, a country which had in the past made a valuable contribution to the activities of the Organization of African Unity. She thanked Mr. Lindgren Alves for his suggestions, but pointed out that although the Sub-Commission did actually help people by some of its resolutions, there were other cases in which it could undoubtedly do better. If the Sub-Commission were to adopt the draft resolution under consideration, whether amended or not, how would its decision be received by Algerians?

35. Mr. CHERNICHENKO said that his view on the adoption by the Sub-Commission of resolutions on situations in countries was well known: such resolutions politicized the Sub-Commission's work, to the detriment of other aspects of its mandate, and the recurrent discussions on the matter only served to convince him of his opinion.

36. In substantive terms, the draft resolution was marked by a number of serious shortcomings, which were not remedied by the amendments proposed by Mr. Lindgren Alves. As everyone was aware, in Algeria the human rights violations were committed by extremist terrorist groups. The Sub-Commission should therefore guard against adopting a resolution criticizing the Algerian Government for abuses that were in no way comparable to those of the terrorist groups. There was no reason why Algeria should not be mentioned in a draft resolution on terrorism and human rights, for example, but in the draft resolution under consideration the issue was addressed the wrong way round.

37. Mr. ALI KHAN said he opposed the draft resolution because, rather than directly addressing the issue of human rights, it made an assessment of the political developments under way in Algeria. He also shared Mr. Chernichenko's view that the terrorist acts committed there should be condemned under the appropriate agenda item. He also pointed out that a political process bringing together all those who condemned violence was under way in Algeria and that the Sub-Commission's task should be to encourage it.

38. Mr. MEHEDI said he shared Mr. Lindgren Alves' opinion that the title of the draft resolution was not in line with its content. In his view, the Sub-Commission would be departing from its mandate if it purported to assess the political situation in Algeria. Some provisions of the draft resolution made no distinction between lawful action by the security forces and the acts of armed terrorist groups which had reached extremes of barbarity. The

sponsors of the draft resolution apparently took the view that there had been a general collapse of all machinery for monitoring and promoting human rights in Algeria, presenting the Algerian people as the hostages of antagonistic groups engaging in blind acts of violence. In his view, the war was not a civil war but a war against civilians. As far as the allegations of ill-treatment by the security forces were concerned, the Algerian authorities had taken various measures to limit human rights violations.

39. As for compliance with the International Covenant on Civil and Political Rights, he pointed out that no organ, whether a treaty body or any other, had taken a decision against Algeria in that respect. Algeria had ratified numerous international human rights agreements, and in particular the protocol allowing individuals to lodge individual or collective complaints with the competent bodies.

40. To conclude, he said the draft resolution was untimely, as it could not fail to disturb the democratic process under way in Algeria, which had gained the support of several political parties, and that it should therefore be withdrawn.

41. Mr. ALFONSO MARTÍNEZ said he shared Mr. Mehedi's view. As he was also unable to accept the amendments proposed by Mr. Lindgren Alves, he too requested that the draft resolution be withdrawn.

42. Mr. FAN Guoxiang said the Government of Algeria had adopted legitimate measures to preserve law and order and to combat terrorists. Moreover, the Government of Algeria cooperated with the various United Nations human rights mechanisms and had achieved results in safeguarding and protecting human rights. In his view, the draft resolution would not serve the cause of human rights and would complicate the current political negotiations.

43. Mr. GUISSE said he shared Mr. Fan Guoxiang's view. In addition, he pointed out that the text of the draft resolution referred to violations committed by armed groups. Hitherto the Sub-Commission's resolutions had always been adopted in respect of States and not of armed groups. For that reason, he proposed deferring consideration of the draft resolution to a later session.

44. Mr. EL-HAJJE said he doubted that the draft resolution was the best means of assisting the Government of Algeria in overcoming its difficulties and asked Mr. Joinet to withdraw it, failing which, he proposed that a vote should be taken.

45. Mr. BOSSUYT said that in his view the amendments proposed by Mr. Lindgren Alves were acceptable, with the exception of his proposed title, which he suggested amending to "Human rights violations in Algeria whose origin is in terrorist acts".

46. Mr. LINDGREN ALVES said he accepted the new wording and proposed that a vote should be taken on the text which he had amended orally.

47. Mr. JOINET said, in reply to Mr. El-Hajje, that the Sub-Commission should not assist Governments alone. Moreover, he denied that his intention

had been to politicize the issue. His aim, which had been achieved, had primarily been to have the human rights situation in Algeria debated in the Sub-Commission.

48. Mr. DEMBRI (Observer for Algeria) said he felt the introduction of a draft resolution on Algeria as an injustice, as Algeria's human rights record had been exemplary. When the war of liberation had ended, far from harbouring any feeling of hatred towards the former colonial Power, Algeria had disseminated the humanistic principle that any people which oppressed another was not free, in accordance with the teaching of the 1789 French Revolution itself. After it had gained its independence, Algeria had defended all peoples, whether free or under colonial domination, that were struggling for decolonization in Africa and against apartheid. Moreover, Algeria was constantly campaigning to ensure respect for the unity and territorial integrity of Cyprus. The Algerian people had always done their duty and shown solidarity by offering shelter to all victims of oppressive dictatorial regimes.

49. He was deeply shocked by the draft resolution, as the struggle against terrorism in Algeria was primarily a struggle on behalf of human rights. While he acknowledged that the intention of the sponsors, who had wished to condemn the action of armed Islamic groups unreservedly, was generous, he believed that there were no grounds for claiming that the population had to choose between two camps, thereby countenancing the idea that there was a civil war. The struggle against reactionary forces in Algeria was exemplary because it protected sub-Saharan Africa and because it was a model for all third world countries in transition. Despite all the difficulties it faced, in its struggle against terrorism the Government of Algeria not only employed all the lawful means available to it, but had also suspended executions since 1993 and adopted a clemency act.

50. He called upon NGOs to give examples of any failure to observe human rights which had been ascertained by the treaty bodies or by any other bodies, so that the Government of Algeria could verify the facts. It was paradoxical that the draft resolution came at a time when the Government of Algeria had just submitted three reports to United Nations treaty bodies: to the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. So far, none of those bodies had condemned Algeria. On the contrary, in its conclusions, the Committee against Torture had emphasized the vigorous democratic process under way in Algeria and the progress made towards the rule of law. He renewed the invitation extended in 1993 to the Special Rapporteur on the question of extrajudicial, summary or arbitrary executions to visit Algeria.

51. In reply to a question by Mr. ALFONSO MARTÍNEZ, Mrs. DAES and Mr. JOINET said that they would accept the amendments proposed by Mr. Lindgren Alves and Mr. Bossuyt.

52. Mr. LINDGREN ALVES pointed out that the draft resolution was not directed against Algeria, as was apparent from the wording of operative paragraph 1.

53. The CHAIRMAN put draft resolution E/CN.4/Sub.2/1997/L.3 to the vote.

54. A vote was taken by secret ballot.

55. At the invitation of the Chairman, Mrs. Attah and Mr. Yimer acted as tellers.

56. Draft resolution E/CN.4/Sub.2/1997/L.3 was rejected by 15 votes to 9, with 1 abstention.

Draft resolution E/CN.4/Sub.2/1997/L.5 (Situation of human rights in the Congo)

57. Mr. EIDE said that the end of the last preambular paragraph should be amended to read:

> "... within the framework of the International Committee of Mediation for the negotiated resolution of the conflict, presided over by the President of Gabon, Mr. Omar Bongo."

In the French version only, in the second preambular paragraph, the words "Pacte international relatif aux droits civils et politiques" should be inserted after the words "Pacte international relatif aux droits économiques, sociaux et culturels".

58. He emphasized that the draft resolution was not directed against the Congo, but was simply intended to help the country to resolve its difficulties.

59. Mr. GUISSE, endorsed by Mrs. ATTAH, Mr. YIMER, Mr. KHALIL and Mr. EL-HAJJE, said that the draft resolution was untimely, because an international committee of mediation for the negotiated resolution of the conflict had already been established under the aegis of OAU, and asked the sponsors to withdraw it.

60. Mr. EIDE took note that the majority of the experts apparently opposed the adoption of draft resolutions on the human rights situation in countries, as was clear from the rejection of the two previous draft resolutions. Accordingly, he asked the sponsors to withdraw the draft resolution under consideration and suggested that the Sub-Commission should recommend to the Commission that it withdraw the Sub-Commission's mandate to draw the Commission's attention to the human rights situation in countries.

61. Mr. ALFONSO MARTÍNEZ said that he was unable to understand Mr. Eide's second proposal. He could not see how the Sub-Commission could make such a recommendation to the Commission.

62. Mr. BOSSUYT said that as a sponsor of the resolution, he opposed its withdrawal. For the benefit of Mr. Guissé, he emphasized that the Sub-Commission had, in the past, adopted draft resolutions on a number of African countries whose situation was nevertheless already being considered by OAU.

63. Mrs. PALLEY said that the pressure exerted by some Governments on the experts when a vote was taken on draft resolutions under agenda item 2, to which she herself had been subjected, was unacceptable. She noted that the Sub-Commission was in the process of winding itself up and suggested that the Commission would perform the task of examining the human rights situation in

countries better than the Sub-Commission, particularly because the government representatives who sat on the Commission were not subject to the same type of pressure the experts on the Sub-Commission had to face.

64. Mrs. ATTAH said that no one had ever exerted any pressure on her.

65. The CHAIRMAN, noting that the observer for the Congo was absent, invited the Sub-Commission to vote on the draft resolution.

66. A vote was taken by secret ballot.

67. At the invitation of the Chairman, Mrs. Gwanmesia and Mr. Alfonso Martínez acted as tellers.

68. Draft resolution E/CN.4/Sub.2/1997/L.5 was adopted by 13 votes to 10, with 2 abstentions.

Draft resolution E/CN.4/Sub.2/1997/L.8 (Situation of human rights in Bahrain)

69. Mrs. PALLEY, introducing the draft resolution, said that in the past year there had been a disturbing upsurge in human rights violations in Bahrain, where democracy had still not been established. Reliable sources had in particular described the persistent and large-scale use of torture in Bahraini prisons, violence against women and children held in detention and arbitrary detentions without trial and without any possibility for detainees to be assisted by a lawyer. The draft resolution was intended to bring the situation in Bahrain to the attention of the international community, and she hoped that the Sub-Commission would adopt it.

70. Mrs. GWANMESIA said that the Sub-Commission could not condemn a country which, as was stated in the fourth preambular paragraph of the draft resolution, was facing problems of internationally assisted terrorism. Nor could it condemn a country on the grounds that it had not ratified the two international human rights Covenants and the Convention against Torture, which she believed that Bahrain was actually prepared to ratify. Clearly, the adoption of the draft resolution would not encourage it to do so. For all those reasons, she requested that her name should be deleted from the list of sponsors.

71. Mrs. WARZAZI said that she fully shared the view expressed by Mrs. Gwanmesia and that it was not the task of the Sub-Commission to condemn Governments, but to help them to strengthen protection for human rights.

72. Mr. JOINET pointed out that the draft resolution in no way condemned Bahrain for not having ratified certain international instruments, but invited it, in conformity with the Vienna Programme of Action, to ratify them. He added that in its dialogue with States, the Sub-Commission should not remain silent about the fate of the victims of human rights violations. He would not oppose the withdrawal of the draft resolution, provided that when its observer spoke, the Government of Bahrain committed itself before the Sub-Commission to ratifying the instruments referred to above.

The meeting rose at 6.15 p.m.